**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929**

**WP(C).No. 13224 of 2007(Y)**
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**OS.18/2004 of MUNI-MAGI.COURT,PATTAMBI**
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**PETITIONER:**
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**1. SABU JOSE, SON OF MOLOPARAMBIL JOSE,**
**PARTNER MALAYAKAM GRANITES,**
**CHAZHIYATTIRI AMSOM, DESOM, OTTAPALAM TALUK.**

**2. SANTHOSH JOSE, SON OF MOLOPARAMBIL JOSE,**
**PARTNER MALAYAKAM GRANITES,**
**-DO- -DO-**

**BY ADV. SRI.V.GIRI**
**SRI.C.MURALIKRISHNAN (PAYYANUR)**

**RESPONDENTS:**
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**SHIBU ALIAS JOSEPH GEORGE,**
**SON OF KOCHIRAVAYALIL VARKI GEORGE,**
**CHAZIYATTIRI AMSOM AND DESOM, OTTAPALAM TALUK.**

**BY ADV. SRI.C.CHANDRASEKHARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

EXT. P1 TRUE COPY OF THE PLAINT IN O.S. 18/04 OF PATTAMBI MUNSIFF MAGISTRATE COURT DATED 12.2.04.

EXT.P2 TRUE COPY OF WRITTEN STATEMENT OF DEFENDANTS IN EXT.P1 SUIT.

EXT.P3 TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER DATED 28.2.04.

EXT.P4 TRUE COPY OF ORDER IN WPC 26310/05 OF THIS COURT.

EXT.P5 TRUE COPY OF APPLICATION FOR ISSUE OF COMMISSION FILED IN P1 SUIT DATED 5.3.07.

EXT.P6 TRUE COPY OF OBJECTION FILED BY DEFENDANTS TO EXT.P5 APPLICATION DATED 3.4.07.

EXT.P7 TRUE COPY OF THE ORDER IN IA 205/07 DATED 10.4.07 OF THE PATTAMBI MUNSIFF MAGISTRATE COURT.

[ True copy ]

P.A. to Judge.

**M.N.KRISHNAN, J**

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**W.P.(C) No.13224 OF 2007**

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**Dated this the 24th day of May, 2007**

**JUDGMENT**

This writ petition is filed seeking to quash Ext.P7 order passed in I.A.No.205 of 2007. The plaintiff in the suit filed an application under Order 26 Rule 9 C.P.C. to give direction to the Commissioner, who inspected the property to give additional particulars and has numbered it as 1 to 9. Learned counsel for the writ petitioners submits that they are all quite unwarranted and unnecessary and therefore the trial court had erred in allowing the request of the plaintiff in the suit.

2. I heard the counsel for both sides in detail. A perusal of the plaint would show that the suit is one for injunction to restrain the defendants from operating the crusher units in plaint A and B Schedules, or in other words, the suit is one for injunction to restrain the defendants from using the quarry which will endanger the security, safety and life of the plaintiff. The interim injunction application was moved in 3 stages and ultimately this court confirmed the order of the trial court, which disallowed the prayer for temporary injunction. The plaintiff wants the Commissioner to prepare a

certified sketch of the property comprised in Sy.No.274 and marked 2 querries. He also wanted the distance between 110 K.V.line and the quarry. It is further requested by him that the distance from St.Mary's Church and cemetry to the quarry has to be noted. Similarly he wants to know whether the crush powder is there on the trees surrounding the property. He also wants to locate the distance to which the pieces had gone on account of the functioning of the quarry. It is true that this court while disposing of the appeal had observed about the statutory body's functioning and whether there will be an attempt of overlapping, etc. But, in a suit for injunction of this nature, it is desirable that clear evidence is available on all points, so that the court will be in a position to analyse both scientifically and otherwise how the matter can be resolved. I feel that the points wanted to be noted by the plaintiff cannot be regarded as unwanted or immaterial for disposal of the case.

3. Therefore, I agree with the order passed by the learned Munsiff and therefore the writ petition lacks merit and the same is dismissed. The Commissioner may be directed to visit the property and submit a report within a period of six weeks from the date of receipt of a copy of this judgment and the trial can also be held as expeditiously as possible and completed within 3 months from the date of the submission of the

Commissioner's report. Both parties can be permitted to file work memo before the trial court for noting the relevant points which they deem necessary for a proper disposal of the case.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**